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**No. 30 CUTTACK, WEDNESDAY, JANUARY 7, 2015/PAUSA 17, 1936**

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**LABOUR & E.S.I. DEPARTMENT**

**NOTIFICATION**

The 27th December 2014

No. 10575—li/1(B)-118/2008-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th October 2014 in Industrial Dispute Case No. 48/2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Municipal Corporation, Cuttack and its workman Shri Pratap Swain, Ex-NMR was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 48 OF 2012

Dated the 20th October 2014

*Present :*

Shri S. K. Sahoo, O.S.J.S. (Jr. Branch),  
Presiding Officer, Labour Court, Bhubaneswar.

*Between :*

The Management of .. First Party—Management  
Municipal Corporation, Cuttack.

And

Its Workman .. Second Party—Workman  
Shri Pratap Swain, Ex-NMR,  
At Nuapada, P.O. Nuabazar, Dist. Cuttack.

*Appearances :*

1. Shri Ranjit Keshari Samal, Advocate

2. Shri Kishore Kumar Mohanta, Advocate .. For the First Party Management

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Shri Trilochan Lenka, Advocate .. For the Second Party Workman

## AWARD

The Government of Odisha, in their Labour & E.S.I. Department in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause (C) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 9187—li/1(B) 118/2008-LESI,, dated the 7th November 2012 :—

"Whether the termination of services of Shri Pratap Swain by way of refusal of employment by the Management of M/s Cuttack Municipal Corporation, Cuttack is legal and/or justified ? If not, what benefits Shri Swain is entitled to ?"

2. The case of the second party workman is that he was employed under the first party management in the month of March 1996 as N.M.R. Mate and continued till the 30th April 1998. On the 1st May 1998 when the second party went to perform his duty he was refused by the first party management. In spite of several request to the first party management the second party was not re-instated in service. So on the 28th November 2007 the second party had raised an Industrial Dispute before the D.L.O., Cuttack. Due to adamant attitude of the first party the conciliation proceeding initiated by the D.L.O. failed. The second party had worked for more than 240 days in every calendar year till refusal of his service. The second party is a workman coming under the definition of 'workman' under Section-2(J) of Industrial Disputes Act, 1947. The first party management has not complied Section 25(F) of the Industrial Disputes Act, 1947, at the time of retrenchment of the second party. The second party is entitled for re-instatement in service with full back wages and consequential service benefits.

3. In pursuance of notice issued by this Court the first party management entered his appearance and filed his written statement. The case of the first party management is that the second party was not working under the first party management from 1996 till 1998. His engagement was not in conformity with law and illegal. No selection procedure was adopted for the appointment of the second party. The engagement of the second party was not within the knowledge of the Establishment Section of the first party organisation. No order of appointment or termination was issued to the second party. On verification of the record by the first party it is confirmed that no such voucher bearing No. 5936 was issued to the second party. The said voucher relates to a wage bill of the School staff drawn in the month of March 1996. The said document has been created by the second party for this case. At no point of time the second party was engaged by the first party. The age which has been given by the second party in his claim statement is not true. He is not aged about 34 as on the 18th February 2013. His age was 25 years on the 14th March 2008 which appears from an affidavit filed by the second party before the first party. At the time of his alleged appointment under the first party the second party was aged about 12 years only. Hence the second party is not entitled for any relief.

4. Basing on the pleadings the following issues have been settled :—

- “(i) Whether the termination of services of Shri Pratap Swain by way of refusal of employment by the management of M/s. Cuttack Municipal Corporation, Cuttack is legal and/or justified ?
- (ii) If not, what benefits Shri Swain is entitled to ?”

5. The second party workman is examined as W.W.1 whereas a Junior Assistant of the first party organisation is examined as M.W.1 and Exts. A,B, C and D are marked on its behalf. Ext. A is the relevant entry at page No. 28 of the Cash Register maintained by the first party organisation. Ext. B is the application form submitted by the second party to the first party on 14th March 2008. Ext. C is an affidavit of the second party dated the 12th March 2008 filed before the first party along with Ext. A for allotment of a shop room. Ext.D is the written agreement in between the first party and the second party for possession of the shop room.

### FINDINGS

6. *Issue Nos. (i) & (ii)*—For the sake of convenience and to avoid repetition both the issues are taken-up together for discussion. W.W. 1. the second party workman in his evidence deposed that he was engaged under the first party with effect from March 1996 as N.M.R. Mate and perform his duty till 30th April 1998. Admittedly no documentary evidence is produced by him to show his appointment/engagement under the first party organisation. From the copy of the failure report of the conciliation attached to the reference received from the Government it appears that before the Conciliation Officer the second party was claiming his employment on a voucher bearing No. 5936, alleged to have been issued by the first party. Curiously the second party has not mentioned about such voucher in his claim statement. It is alleged by the first party that no such voucher was issued to the second party by the first party organisation and it has been fabricated by the second party for this case. M.W. 1 in his evidence also deposed that no such voucher was prepared or supplied to the second party and the same was manipulated by the second party. Ext. A is the Page No. 28 of the Cash Register maintained by the first party organisation and Ext. A/1 is the relevant entry regarding voucher No. 5936. On perusal of Ext. A and A/1 it is clear that Voucher No. 5936 relates to payment to the School Staffs.

7. It is argued by the first party organisation that even though for the sake of argument the appointment of the second party is admitted the said appointment is illegal and violation of Section 73 of the Odisha Municipal Act, for which the first party is not bound to comply Section 25-F of the I.D. Act, 1947. It is a fact that sub-section (2) of Section 73 of the Odisha Municipal Act provided that in case of any emergency the Municipality can appoint a person for a period not exceeding six months. The second party claimed that he was engaged by the first party continuously for about two years. So his continuity in service is in violation of Section 73 of the Odisha Municipal Act. The first party relied on decisions reported in 69(1990) CLT 264 Ananda Chandra Mohanty Vrs. Jharsuguda Municipal Council represented by its Chairman and others and Labour Law Journal

2003 January 346 Government Servant's Co-operative Society Ltd. Wada Karmacherry Thrissur District *Versus* Industrial Tribunal Alapuzha and another and submitted that as the alleged appointment of the second party workman is beyond the period prescribed under the Act, no notice is to be issued to the second party before removal from his service and there was no master and servant relationship in between the parties in this case. He further argued that there is no necessity for compliance of Section 25-F of the I.D. Act, 1947 by the first party organisation. Gone through the pronouncements relied on by the first party along with the evidence available on the case record. As the engagement of the second party under the first party organisation was in contravention with the Odisha Municipal Act there is no Master and Servant relationship in between the first party organisation and the second party and there is no necessity for compliance of Section 25-F of the Act by the first party organisation.

8. After scrutinizing the evidence on record it is clear that the refusal of employment of Shri Pratap Swain by the management of M/s Cuttack Municipal Corporation, Cuttack is legal and justified. The second party is not entitled for any relief.

The reference is disposed of accordingly.

Dictated and corrected by me.

S. K. SAHOO  
20-10-2014  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. SAHOO  
20-10-2014  
Presiding Officer  
Labour Court, Bhubaneswar

By order of the Governor  
M. NAYAK  
Under-Secretary to Government